No. 17-1351

En Banc oral argument scheduled for May 8, 2017

United States Court of Appeals for the Fourth Circuit

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, AS PRESIDENT OF THE UNITED STATES, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
District of Maryland No. 8:17-cv-00361-TDC

BRIEF OF AMICI CURIAE

Muslim Justice League,
Muslim Public Affairs Council,
Islamic Circle of North America,
Council on American-Islamic Relations,
California, and Asian Americans
Advancing Justice–Asian Law Caucus

in support of Plaintiffs-Appellees
and Affirmance

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Disclosure Of Corporate Affiliations And Other Interests

Pursuant to FRAP 26.1 and Local Rule 26.1, Amici Muslim Justice League, Muslim Public Affairs Council, Islamic Circle of North America, Council on American-Islamic Relations, California, and Asian Americans Advancing Justice–Asian Law Caucus, state that:

1. None of Amici are publicly held corporations or entities;
2. None of Amici have any parent corporates;
3. None of Amici issue stock;
4. No publicly held corporation or entity related to Amici has a direct financial interest in the outcome of this litigation.

April 19, 2017

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TABLE OF CONTENTS

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 4

ARGUMENT 5

The E.O. Harms Muslims Throughout The Country, Not Simply Those In The Fourth Circuit, And Therefore Must Be Enjoined Nationwide 5

A. The effect of the E.O. on Muslims nationwide constitutes injury under the Establishment Clause 5

1. The Muslim Ban unlawfully and injuriously restrains travel among Muslim communities 9

a. The Muslim Ban has had a chilling effect on personal activities 10

b. The Muslim Ban has interfered with professional activities 12

c. The Muslim Ban has also impeded academic activities 14

2. The Muslim Ban promotes harmful stereotypes about Muslims 15

3. In targeting Muslims, the Muslim Ban has caused psychological—and arguably physical—harm 21

B. Despite attempts to sanitize its text, the clear intent of the Muslim Ban is to disfavor and burden Muslims 24

C. The Muslim community may still face impermissibly invasive interrogations at the border even after the Muslim Ban portion of the E.O. is lifted 25

D. The E.O's focus on Muslims and Muslim-majority countries is divorced from evidence, ill-conceived, and ill-advised 28

CONCLUSION 30

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STATEMENT OF INTEREST[1]

Amici Curiae are organizations that advocate for the dignity and fair treatment of the Muslim community throughout the United States. Amici can provide unique and important insights regarding the impact of the March 6, 2017 Executive Order 13,780 (the "E.O." or "Muslim Ban") and how it unfairly subjects Muslims, persons from Muslim-majority countries, and even those simply perceived as Muslim, to unwarranted harassment and religious discrimination by government officials. Moreover, Amici can address the effects and public perceptions caused by an executive order that targets the Muslim community under the guise of national security, including the stigmatization of Muslims and Muslim communities, increased discrimination, and discouragement of Muslims and persons from Muslim-majority countries—both U.S. citizens and non-citizens alike—from fully and freely participating in American society for fear of reprisal, directly undermining Amici's work.

This case addresses the legality of an executive order that intends to suspend the entry of people from six designated countries and refugees into the United States. Amici support the Appellees' arguments that this E.O. is unconstitutional, and submit this brief to address the importance of a nationwide injunction to prevent the unlawful perpetuation of such injuries on our Muslim communities. Accordingly, Amici have a substantial interest in the proper resolution of the issues this case presents.

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[1] This brief is filed with the consent of all parties. No party's counsel authored any part of this brief and no one, aside from Amici and their counsel, made any monetary contribution toward the preparation or submission of this brief.

The Muslim Justice League (MJL) is an independent nonprofit organization advocating for the protection of human and civil rights that are threatened under national security pretexts, through community education and organizing, and legal and policy advocacy. In the course of providing educational workshops, MJL has fielded increased questions since the announcement of the Muslim Ban from concerned community members regarding their fears about the consequences of traveling to see family or pursue educational, professional, or religious objectives. MJL participated as amicus curiae in *Ashcroft v. Abbasi* (U.S. 2016), challenging government policies and practices that targeted people based on their race, religion, ethnicity or national origin.

The Muslim Public Affairs Council (MPAC) is a community-based public affairs nonprofit organization working for the integration of Muslims into American society. MPAC aims to increase the public understanding of Islam and improve policies that affect American Muslims by engaging our government, media, and communities. MPAC's view is that America is enriched by the vital contributions of

American Muslims. MPAC works diligently to offer the public a portrayal that goes beyond stereotypes and shows that Muslims are part of a vibrant American pluralism. MPAC participated as amicus curiae in cases concerning civil liberties (*Boumediene v. Bush* and *al Odah v. U.S.* (U.S. 2007)), immigration (*Arizona v. U.S.* (U.S. 2012)), and religious liberties (*Holt v. Arkansas Dept. of Correction* (U.S. 2014)), and will be filing a brief supporting the challenge to the E.O. in *State of Hawai'i v. Trump*.

The Islamic Circle of North America (ICNA), established nearly 50 years ago, is a leading grass roots organization in the American Muslim community. ICNA is a diverse and inclusive organization that works toward establishing a place for Islam in America, focusing on self-development, education, outreach and social services. ICNA has collaborated with numerous Muslim organizations to establish connections between Islam and the public and also works closely with many Muslim organizations and national interfaith organizations for the betterment of society. In addition to its national convention, ICNA and its regional chapters have many ongoing projects, programs, and activities throughout the country.

The Council on American-Islamic Relations, California (CAIR-CA), is a chapter of the nation's largest American Muslim civil rights and advocacy organization. CAIR-CA's mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. Through its four offices, CAIR-CA serves the state's estimated one million American Muslims by providing direct legal services to victims of discrimination, working with the media, facilitating community education, and engaging in policy advocacy to advance civil rights and civic engagement.

Asian Americans Advancing Justice–Asian Law Caucus (ALC) is the nation's first legal and civil rights organization serving low-income, immigrant, and underserved Asian-Pacific American communities. The AAAJ-ALC's National Security & Civil Rights Program has built on this legacy of advocacy to serve the Arab, Middle Eastern, Muslim and South Asian communities in the greater Bay Area and nationally. AAAJ-ALC has participated as amicus curiae supporting challenges to the executive orders in *Darweesh v. Trump* (E.D.N.Y. 2017), *State of Hawai'i v. Trump* (D. Haw. 2017) and *Washington v. Trump* (W.D. Wash. 2017). AAAJ-ALC also participated as amicus curiae in *Ashcroft v. Abbasi* (U.S. 2016), challenging government policies and practices that targeted people based on their race, religion, ethnicity or national origin.

SUMMARY OF ARGUMENT

The scope of the injunction barring enforcement of Section 2(c) of the E.O. must be nationwide because the Muslim Ban's harmful effect on Muslim communities has impacted the entirety of the United States. Only a nationwide injunction can effectively protect the religious freedom of those targeted by the E.O. and mitigate its injurious effects which include, *inter alia*, significant restraint on travel and day-to-day activities, the promotion of harmful anti-Muslim stereotypes, and psychological harm. Compounding these injuries is the fact that the Muslim Ban has no basis in evidence. Therefore, limiting the scope of the injunction to just those plaintiffs challenging the E.O. in this Court, or even solely to individuals residing within the Fourth Circuit, ignores the far-reaching impact of the Muslim Ban, overlooks the compelling and concrete injuries that Muslim individuals and communities will continue to suffer nationwide, and does nothing to make the United States safer.

ARGUMENT

The E.O. harms Muslims throughout the country, not simply those in the Fourth Circuit, and therefore must be enjoined nationwide.

A. The effect of the E.O. on Muslims nationwide constitutes injury under the Establishment Clause.

"[T]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). By imposing a ban on travel from six Muslim-majority countries and proposing an "extreme vetting" program targeting Muslims and travelers from Muslim-majority countries long after the Muslim Ban expires, the President has violated this "clearest command" and created a system officially disfavoring Muslims. Multiple federal courts that have heard challenges to the E.O. have already found that the harms caused by the Muslim Ban are direct, concrete injuries under the Establishment Clause.[2] These injuries include:

- ***Significant restraint of travel and freedom of movement***, causing, e.g., the separation of families,[3] the cancellation of personal and professional travel plans

[2] *See e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1168-69 (9th Cir. 2017) ("When the [E.O.] was in effect, the States contend that the travel prohibitions harmed the States' university employees and students, separated families, and stranded the States' residents abroad. These [deprivations of constitutional rights] are substantial injuries and even irreparable harms."); *Sarsour v. Trump*, 2017 WL 1113305, *14 (E.D. Va. 2017) ("The Fourth Circuit has held that, as a matter of law, 'loss of First Amendment rights, for even minimal periods of time, unquestionably constitutes irreparable injury.'") (citing *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 520–21 (4th Cir. 2002)); *Int'l Refugee Assistance Project v. Trump*, 2017 WL 1018235, *16-17 (D. Md. 2017) ("'[W]hen an Establishment Clause violation is alleged, infringement occurs the moment the government action takes place.' … The Court accordingly finds that Plaintiffs have established a likelihood of irreparable harm when the Second Executive Order takes effect."); *See also Aziz v. Trump*, 2017 WL 580855, *10 (E.D. Va. 2017); *Hawai'i v. Trump*, 2017 WL 1011673, *16 (D. Haw. 2017).

[3] *Washington*, 847 F.3d at 1169.

abroad or visits from family or colleagues to America,[4] and disruption of academic activities.[5]

- ***The promotion of harmful stereotypes of Muslims***, causing deep sadness that both the original and revised E.O. convey the message that a broad travel ban is "needed" to prevent people from certain Muslim countries from entering the United States.[6]

- ***Psychological harm and mental stress***, including "significant fear, anxiety and insecurity" due to the Muslim Ban and underlying "anti-Muslim attitudes" and "official anti-Muslim sentiment"[7]; feelings of isolation and disparagement, worries about safety and belonging in this country, and concerns about "the disfavoring of Islam"[8]; "anxiety, confusion, and distress" due to the uncertainty introduced by the Muslim Ban, and "an uptick in students, employees, and faculty using [university] counseling services"[9]; being affected by the knowledge that the federal

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[4] *Aziz*, 2017 WL 580855, *2-3, *10; *Washington*, 847 F.3d at 1159.

[5] *Aziz*, 2017 WL 580855, *2; *Sarsour v. Trump*, 2017 WL 1113305, *5.

[6] *Hawai'i*, 2017 WL 1011673, *10.

[7] *Int'l Refugee Assistance Project*, 2017 WL 1018235, *7-8.

[8] *Id.*

[9] *Aziz*, 2017 WL 580855, *3.

> Government would discriminate against their ethnicity and religion; feeling targeted as Muslim because of their religious views and national origin, and concern about not being able to associate as freely as those of other faiths; and hurt, confusion, sadness and stigma generally.[10]

By virtue of the breadth of the challenges to the E.O alone—literally from coast to coast—there can be no doubt that Muslims and those perceived to be Muslims throughout the Unites States are affected by the E.O. The widespread harm to Muslim communities directly arising from the Muslim Ban necessitates a nationwide injunction, without which these communities will continue to face immediate, irreparable harm.

A regional injunction, rather than a nationwide injunction, would cause chaos for travelers at ports of entry across the country, as their mere location would determine whether or not they are subjected to unconstitutional screening policies based on their religious identity. This may lead to anxious, circuitous attempts to select travel paths through jurisdictions in which the Muslim Ban has been enjoined. Such an inconsistent and confusing patchwork of immigration and reentry enforcement is improper: "The immigration laws of the United States should be enforced vigorously and uniformly."[11]

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[10] *Hawai'i*, 2017 WL 1011673, *10.

1. The Muslim Ban unlawfully and injuriously restrains travel among Muslim communities.

The E.O.'s harmful impact has been far-reaching—upending the personal, professional, and academic activities of countless Muslim individuals and communities nationwide. Amici have been overwhelmed from concerned Muslim individuals, both citizens and non-citizens alike, who are justifiably worried about the E.O.'s impact. Like the plaintiffs in the cases challenging the E.O., Amici members include Muslims and those from Muslim-majority countries forced to make difficult decisions on account of the Muslim Ban—whether to visit a terminally ill mother in Iran, whether to attend a conference abroad due to uncertainty about being permitted reentry into the U.S., whether to travel while one's wife is pregnant due to her anxiety that her partner could return, and many other difficult considerations.
In short, the reality simply does not match the Government's assertion of a religiously neutral executive order.

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[11] *Arizona v. United States*, 567 U.S. 387, 390 (2012) (quoting IRCA § 115).

a. The Muslim Ban has had a chilling effect on personal activities.

As intended, the Muslim Ban has prevented families from traveling to the United States from the six targeted countries, often with heart-wrenching effect on families. For instance, a bride's mother and sister were recently barred from attending a wedding in Baltimore because the U.S. consulate cancelled their scheduled visa interviews after the first E.O. was instituted, and refused to reschedule, even after the initial Muslim Ban was stayed.[12] Illustrating the compounding impact the Muslim Ban has had on individual families, the bride's sister-in-law (a green card holder) and her infant child were also visiting Iran and were temporarily barred from returning home to the United States when the initial Muslim Ban went into effect.[13]

Those already in the United States with families from countries affected by the Muslim Ban are unable to see their families due to fear the Muslim Ban will bar their reentry into the United States.[14] Couples based in the United States "with immigrant parents say they are hesitant about traveling to their familial homelands to celebrate [weddings]" because they fear that they may not be allowed back into the United States.[15] In another case, Amici report that a Canadian-Muslim couple postponed their May 2017 wedding due to numerous cancellations from American-Muslim friends and relatives who were concerned about how the Muslim Ban would impact their return travel across the border. Many expected guests had heard of Muslims being targeted and detained for hours at the Canadian border, regardless of citizenship status, as a result of the Muslim Ban.

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[12] Ed Pilkington, *Trump Travel Crackdown Turns 'Wedding Celebration into a Family Separation'*, The Guardian (Apr. 14, 2017), https://www.theguardian.com/us-news/2017/apr/14/trump-travel-ban-visa-iran-wedding.

[13] *Id.*

[14] *See, e.g.*, Christina Capecchi & Mary Chapman, *Where the Immigration Ban Hits Home*, N.Y. Times (Jan. 31, 2017), http://www.nytimes.com/2017/01/30/us/immigration-ban-locations.html; Donald McNeil Jr., *Trump's Travel Ban, Aimed at Terrorists, Has Blocked Doctors*, N.Y. Times (Feb. 6, 2017),

Religious activity has also been chilled. For example, the Islamic Society of Baltimore cancelled its annual pilgrimage to Mecca, "amid fears that Donald Trump's travel ban on certain Muslim-majority countries might bar re-entry even to those who call the United States their home."[16]

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https://www.nytimes.com/2017/02/06/health/trump-travel-ban-doctors.html.

[15] Jack Healy & Anemona Hartocollis, *Love, Interrupted: Travel Ban Separates Couples,* N.Y. Times (Feb. 9, 2017), http://www.nytimes.com/2017/02/08/us/love-interrupted-a-travel-ban-separates-couples.html.

[16] Sabrina Siddiqui, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms*, The Guardian (Mar. 14, 2017), https://www.theguardian.com/us-news/2017/mar/14/mosque-obama-visited-trump-travel-ban-muslim.

b. The Muslim Ban has interfered with professional activities.

The E.O. has deeply impacted the professional lives of American Muslims and those traveling to the United States to conduct business. Amici report members taking steps when they travel that they would not have considered before the E.O., such as carrying a United States passport when traveling domestically for fear of having to provide documentation of citizenship.

The E.O. has also directly affected Amici's professional endeavors. For example, ICNA hosts the largest Muslim-American convention in America, with over 20,000 attendees. This year's convention took place earlier this month in Baltimore. While more than 20 international organizations attended last year's convention and presented on humanitarian projects within their countries, only two international organizations agreed to attend this year. Fearful of being detained, harassed, or turned away upon arrival or en route to the United States, the overwhelming majority of speakers opted to forgo the convention entirely.

The E.O. has led to amicus MJL ratifying a practice of not allowing its staff to travel with electronics containing client information. MJL was concerned about how the profiling of Muslims at the border or airports could lead to its employees' devices containing confidential client information and privileged communications being searched by the government. This burdens MJL's limited time and resources, requiring MJL employees to make alternate arrangements and additional purchases to ensure that MJL staff can continue their vital work while traveling.

Moreover, multiple Amici have reported that even those with no ties to the targeted, Muslim-majority countries have expressed concern about traveling outside of the country. For example, some prospective speakers to ICNA's convention hailing from countries that were *not* listed in the E.O. declined to attend for fear that they would nonetheless be impacted by the Muslim Ban and the anti-Muslim profiling it has created. Further, CAIR-CA was recently contacted by a U.S. citizen of Pakistani origin travelling to China for business. He was frightened that ancestry from a Muslim-majority country could bar or complicate his reentry into the United States.[17]

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[17] *See also,* Jayashri Srikantiah, et al., *The New Travel Ban, National Security, and Immigration*, Stanford Law School Blogs (Feb. 1, 2017), https://law.stanford.edu/2017/02/01/the-new-travel-ban-national-security-and-immigration/ ("[T]here have been numerous reports of effects on individuals from countries that are not included in the current travel ban, such as Pakistan, possibly as the result of border agents treating the travel ban as a license to discriminate against other groups of travelers who are Muslim or perceived to be Muslim [thus affecting] immigrants beyond refugees and individuals from the seven countries.").

c. The Muslim Ban has also impeded academic activities.

Students who have obtained admission to American universities have contacted Amici regarding difficulty in obtaining student visas. Many universities have seen a sharp drop in applications from Muslim-majority countries in the months leading up to the Muslim Ban, when then-candidate Trump repeatedly vowed to ban Muslims from the United States.[18] Students from Muslim-majority countries studying in the United States have reported being "distracted from school … waiting to read something that might change the situation, or at least make them comfortable."[19]

A leader of a college campus Muslim Student Association in California explained that "she was so worried about herself and her fellow students that she couldn't keep up with her studies," adding "[i]t really takes away your focus when your identity is being targeted."[20]

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[18] *See* Susan Svuluga, *They're afraid to come': University leaders worry Trump policies will deter international scholars*, Wash. Post (Mar. 24, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/03/24/theyre-afraid-to-come-university-leaders-worry-trump-policies-will-deter-international-scholars/?utm_term=.3bb1753095d0.

[19] Stephanie Saul & Anemona Hartocollis, *After Visa Ban, Hints of Hidden Tension on Mississippi Campus*, N.Y. Times (Feb. 2, 2017), http://www.nytimes.com/2017/02/01/us/mississippi-state-trump-visa-ban.html.

[20] Sammy Caiola, *Travel ban, targeting of mosques trigger mental health concerns among California Muslims*, Sacramento Bee (Feb. 22, 2017),

While attempting to travel abroad for school, a Muslim student (an American citizen) was given an ultimatum from airport security to "[show] proof that you're going to school or we can't let you go through."[21] Amici similarly can attest to instances of students on valid visas forgoing trips home to spend holidays with their family because they are concerned that their visas may be canceled, rendering years of work towards advanced degrees meaningless.

2. The Muslim Ban promotes harmful stereotypes about Muslims.

Not only is the Muslim Ban premised on offensive and false stereotypes, it further perpetuates harm against Muslims across the country by broadly typecasting them and those from Muslim-majority countries as threats to national safety.

While campaigning, the President repeatedly invoked offensive stereotypes in calling for a ban to prevent Muslims from entering the United States,[22] a required registry of Muslims in the United States,[23]

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http://www.sacbee.com/news/local/health-and-medicine/article134386439.html.

[21] Saima Fariz, *Torrance Islamic community shaken by travel ban*, Easy Reader News (Feb. 25, 2017), http://www.easyreadernews.com/146725/torrance-islamic-community-shaken-travel-ban/.

[22] *Donald J. Trump Statement on Preventing Muslim Immigration*, Donald J. Trump for President, Inc. (Dec. 7, 2015), https://www.donaldjtrump.com/press-releases/donald-j.-trump-statement-on-preventing-muslim-immigration.

and the consideration of shutting down mosques as a purported strategy to fight terrorists.[24] In candidate-Trump's press release calling for "a total and complete shutdown of Muslims entering the United States"—which remains on his campaign website to this day—he claimed "large segments of the Muslim population" harbored "great hatred towards Americans" and further justified a Muslim Ban by claiming it would protect the country from becoming "the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life."[25] Candidate-Trump further insinuated that a majority of Muslims believed that "murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women" should be authorized in the U.S.[26]

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[23] Mona Chalabi, *Support for Trump travel ban in line with anti-Muslim attitudes in America*, The Guardian (Feb. 2, 2017), https://www.theguardian.com/us-news/2017/feb/02/polls-widespread-backing-trump-travel-ban.

[24] Alan Rappeport, *Donald Trump Repeats Call to Inspect Mosques for Signs of Terrorism*, N.Y. Times (Nov. 16, 2015), https://www.nytimes.com/politics/first-draft/2015/11/16/donald-trump-repeats-call-to-inspect-mosques-for-signs-of-terrorism/.

[25] *Donald J. Trump Statement on Preventing Muslim Immigration, supra.*

[26] *Id.*

It is therefore no surprise that the E.O. is being interpreted "by civil rights organizations and in other Muslim communities across the country [] as a ban on Muslims and, more broadly, as a statement that Muslims are not welcome in the United States."[27] Indeed, the E.O.'s text adopts the rhetoric of President Trump's campaign by alleging that "[i]n order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles," and further mandating the collection and publication of information regarding foreign nations who have been radicalized and have committed either terrorism-related crimes or acts of gender-based violence, "including so-called 'honor killings.'"[28] This particular provision is a "shaming" and "dehumanizing device" seemingly "designed to whip up fear of Muslims" and perpetuate the "damaging stereotype of Muslims as terrorists."[29]

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[27] Abigail Hauslohner, *Imam: There's an atmosphere of intolerance that says, 'That's okay, that's acceptable now'*, Wash. Post (Mar. 10, 2017), https://www.washingtonpost.com/national/imam-theres-a-climate-of-hate-that-says-thats-okay-thats-acceptable-now/2017/03/09/127f4fd0-0434-11e7-ad5b-d22680e18d10_story.html?utm_term=.76d9792b8d12; *See also* Tracey Wilinson, *Iranian Americans join human rights groups in protesting new ban*, L.A. Times (Mar. 6, 2017), http://www.latimes.com/politics/la-live-updates-9th-circuit-arguments-iranian-americans-others-protest-new-1488825822-htmlstory.html) ("Margaret Huang, executive director of the U.S. branch of Amnesty International, said the [revised] order represented 'the same hate and fear with new packaging' and 'blatant bigotry.' 'It will cause extreme fear and uncertainty for thousands of families by, once again, putting anti-Muslim hatred into policy,' she said, 'and will do nothing to make the country safer.'").

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[28] Donald J. Trump, *Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States*, The White House Office of the Press Secretary (Mar. 6, 2017), https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states; *see also* Nora Caplan-Bricker, *Donald Trump Plans to Track "Honor Killings" Even as He Slashes Violence Against Women Grants*, Slate (Jan. 25, 2017), http://www.slate.com/blogs/xx_factor/2017/01/25/donald_trump_s_immigration_order_will_track_violence_against_women_by_foreign.html ("When Trump suggests that Muslims 'believe that sharia law should supplant American law' and cannot 'share our values and respect our people,' he appeals to ugly prejudices that paint Muslim men as inherently violent and Muslim women as servile and oppressed. Now, he's vowing to use the reach and resources of the federal government to amass stories that will bolster those stereotypes, boosting his agenda in the process.").

[29] Matt Zapotosky, *Federal judge in Hawaii freezes President Trump's new entry ban*, Wash. Post (Mar. 16, 2017), https://www.washingtonpost.com/local/social-issues/lawyers-face-off-on-trump-travel-ban-in-md-court-wednesday-morning/2017/03/14/b2d24636-090c-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.0f8cb56a7ede; *see also* David Nakamura, *Blame game: Trump casts immigrants as dangerous criminals, but the evidence shows otherwise*, Wash. Post (Mar. 24, 2017), https://www.washingtonpost.com/politics/blame-game-trump-casts-immigrants-as-dangerous-criminals-the-evidence-shows-otherwise/2017/03/23/f12dffdc-0f4d-11e7-9d5a-a83e627dc120_story.html?utm_term=.f059ae1aa26e ("Although his two travel-ban orders have been blocked in federal court, the most recent one included a provision mandating that the government begin publicizing information about acts of 'gender-based violence against

Thus, the E.O. rests on, and serves to bolster, these harmful and blatantly offensive stereotypes.[30] Like the stereotypes perpetuated during the President's campaign, the stereotypes advanced by the E.O. depict "Islam [as] an inherently violent and foreign faith, and Muslims [as] a presumptively subversive and inassimilable class of people,"[31] and further "send[s] a message that Muslims are not welcome in the U.S."[32] Many Muslims are receiving this message not only from the country's highest office, but from their neighbors as well, putting some in the harmful position of "religious advocacy and outreach" to combat the E.O.'s "pernicious effects."[33] For example, one Minneapolis physician described having to respond to these stereotypes after a patient asked, "Why do you people hate us?" in the weeks following the E.O.[34]

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women,' including 'honor killings,' in the United States by foreign nationals.").

[30] *See* Khaled Beydoun, *Being a Muslim under Trump is risky. That's why many are hiding their identity*, The Guardian (Mar. 30, 2017), https://www.theguardian.com/commentisfree/2017/mar/30/being-muslim-under-trump-risky-many-hiding-identity ("The stereotypes … are deeply rooted, and readily repackaged and redeployed by Trump's 'Muslim Ban' and rhetoric holding that 'Islam hates us'.").

[31] *Id.*

[32] Human Rights Watch, *US: Trump's New Refugee Order Renews Old Harms* (Mar. 6, 2017), https://www.hrw.org/news/2017/03/06/us-trumps-new-refugee-order-renews-old-harms.

[33] *Sarsour*, 2017 WL 1113305, *5.

[34] McNeil, *supra*, *Trump's Travel Ban, Aimed at Terrorists, Has Blocked Doctors.*

The youngest targets of these abhorrent stereotypes have not been spared. Since the E.O.'s signing in January, Muslim parents have been burdened with explaining to their children why their faith has been vilified in official U.S. policy. One Baltimore mother described finding her 10-year-old daughter crying when she went to pick her up from school. Her daughter explained that a friend told her that she "wasn't allowed to be friends with people who wear those things on their heads."[35] "Kids," a Pennsylvania parent explained, "don't understand the difference between a green card or a citizen or a visa—but they know that Islam is mentioned all the time, and they want to know why the president is singling out Islam—are we different? Is there something wrong with us?"[36] In short, "the new ban, and its justification, conveys the same spurious messages: that Muslims are inherently dangerous."[37] These stereotypes foster the stigmatization of the Muslim communities, increase discrimination, and effectively prevent Muslims and persons from Muslim-majority countries from fully and freely participating in American society.

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[35] Siddiqui, *supra*, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms*.

[36] Neil Munshi, *Muslim Americans express anxiety over Trump travel ban*, Financial Times (Feb. 2, 2017), https://www.ft.com/content/ba9f2d88-e905-11e6-893c-082c54a7f539.

[37] The Editorial Board, *Muslim Ban Lite*, N.Y. Times (Mar. 7, 2017), http://www.nytimes.com/2017/03/06/opinion/president-trumps-muslim-ban-lite.html.

3. In targeting Muslims, the Muslim Ban has caused psychological—and arguably physical—harm.

Muslims across the country have also suffered psychological harm and distress as a result of the Muslim Ban. Public health specialists recently warned that the Muslim Ban could result in mental health harms as those targeted may "experience social isolation and alienation from their community."[38] From "growing anxiety,"[39] "fear,"[40] and feeling "terrified,"[41] to describing the ban as "traumatizing,"[42] "increas[ing] stigmatization of Muslim communities,"[43] and leaving one "feeling hunted [], as if you did something wrong, even if you didn't,"[44] the psychological harms of the Muslim Ban have been concrete and indisputable.

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[38] Lawrence Gostin, et al., *Presidential Immigration Policies Endangering Health and Well-being?*, JAMA (Mar. 23, 2017), http://jamanetwork.com/journals/jama/fullarticle/2613724 ("[L]awful residents such as Muslims could be adversely affected, experiencing social isolation and alienation from their community.").

[39] Fariz, *supra*, *Torrance Islamic community shaken by travel ban.*

[40] *Id.*

[41] Capecchi, *supra, Where the Immigration Ban Hits Home*.

[42] *Id.*

[43] United Nations Human Rights Office of the High Commissioner, *US travel ban: "New policy breaches Washington's human rights obligations" – UN experts* (Feb. 1, 2017), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21136&LangID=E ("'Such an order is clearly discriminatory based on one's nationality and leads to increased stigmatization of Muslim communities,' said the UN Special Rapporteurs on migrants, François Crépeau; on racism, Mutuma Ruteere; on human rights and counter-terrorism, Ben Emmerson; on torture, Nils Melzer; and on freedom of religion, Ahmed Shaheed.").

Worse still, the dangerous stereotypes fostered by the Muslim Ban has also led to physical violence against its targets.[45] On February 22, a gunman in Kansas shot two Indian men, killing one and injuring the other.[46] Before opening fire, he used racial slurs indicating that he thought the men were Middle Eastern and shouted, "get out of my country."[47] Unfortunately in the midst of increasing anti-Muslim rhetoric, such violent attacks have not been isolated incidents. Following the Presidential election and the implementation of the

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[44] McNeil, *supra*, *Trump's Travel Ban, Aimed at Terrorists, Has Blocked Doctors*.

[45] *See* Siddiqui, *supra*, *At mosque Obama visited, fear replaces hope as new Trump travel ban looms* ("'When you talk about the policies being harmful, that's one thing,' said Ahmed Mahmoud, a native of Maryland who attends prayer services at the Islamic Society of Baltimore. But the discourse that they use to justify and facilitate the creation of [Trump's] policies—that in and of itself has been harmful and you see that manifesting in the increase in hate crimes, targeting especially not just Muslims but anybody who shares the physical traits of Muslims.'").

[46] Mark Berman, *He yelled 'Get out of my country,' witnesses say, and then shot 2 men from India, killing one*, Wash. Post (Feb. 24, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/02/24/get-out-of-my-country-kansan-reportedly-yelled-before-shooting-2-men-from-india-killing-one/?utm_term=.6c3c7c2a1ef9.

[47] *Id.*

Muslim Ban, "attacks on conspicuous Muslim expression were hardly confined to one part of the country, or in rural instead of urban centers."[48]

Notably, while President Trump has been quick to stir up stereotypes about Muslims, he has been reticent to speak out against the harmful, and violent, effects. While he yielded to pressure to publically condemn threats against Jewish Community Centers and cemeteries in recent months, "[h]e has said no such thing about attacks on Muslims."[49] On the contrary, he recently expressed regret for revising the Muslim Ban in light of successful court challenges[50] and continued to portray Muslim-majority countries subject to the Ban as "suspect" and "SO DANGEROUS!"[51]

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[48] Khaled Beydoun, *Acting Muslim*, 53 Harv. C.R.-C.L. L. Rev., at 39 (forthcoming 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926162; *see also* Abigail Hauslohner, *supra*, *Imam: There's an atmosphere of intolerance that says, 'That's okay, that's acceptable now',* ("Law enforcement officials in Texas and Florida are investigating fires at three mosques, at least two of which have been ruled arson. Last month in Kansas, a white man shouting 'Get out of my country' shot dead an Indian engineer, who he apparently believed to be from the Middle East. Near Seattle this month, a masked assailant wounded a Sikh man—a member of an Indian religious minority who are sometimes confused for Muslims because the men wear turbans—after shouting at him to 'go back to your country,' and authorities are investigating it as a hate crime. Police in South Carolina are investigating the shooting death of an Indian man there the day before.").

[49] Hauslohner, *supra*, *Imam: There's an atmosphere of intolerance that says, 'That's okay, that's acceptable now.'*

[50] Zapotosky, *supra*, *Federal judge in Hawaii freezes President Trump's new entry ban.*

B. Despite attempts to sanitize its text, the clear intent of the Muslim Ban is to disfavor and burden Muslims.

Though the Ban's text may not explicitly mention the targeting of Muslims, the E.O.'s application makes clear that that is its effect, and statements from President Trump and his senior advisor, Stephen Miller, reveal that this is by design. After signing the revised Muslim Ban, President Trump referred to it as merely a "watered-down version" of the original E.O. and suggested that "we ought to go back to the first one and go all the way," adding that "the need for my executive order is clear."[52] Miller likewise referred to the distinctions between the first and second E.O.s as "mostly minor, technical differences," reiterating, "[f]undamentally, you are still going to have the same, basic policy outcome for the country."[53] These statements highlight the

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[51] Donald J. Trump (@realDonaldTrump), Twitter (Feb. 11, 2017, 4:12 AM), https://twitter.com/realDonaldTrump/status/830389130311921667?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fthehill.com%2Fhomenews%2Fadministration%2F319069-trump-tweets-our-legal-system-is-broken.

[52] Zapotosky, *supra*, *Federal judge in Hawaii freezes President Trump's new entry ban.*

[53] Jamiles Lartey, *'Not about religion': how Trump officials have attempted a travel ban rebrand,* The Guardian (Mar. 15, 2017), https://www.theguardian.com/us-news/2017/mar/15/trump-administration-travel-ban-muslim-religion.

Administration's continued commitment, under the second Muslim Ban, to exclude people from the United States on the basis of their religious identity, thereby causing irreparable harm to Muslims across the country.

C. The Muslim community may still face impermissibly invasive interrogations at the border even after the Muslim Ban portion of the E.O. is lifted.

The E.O. suspends travel into the United States by citizens of six Muslim-majority countries pending the implementation of "maximum" vetting of these travelers.[54] Also called "extreme vetting" during the campaign, President Trump likened it to an "ideological screening test" for immigrants.[55] This announcement immediately raised "significant legal, policy and practical concerns,"[56] heightened by the E.O. and recent State Department instructions regarding targeted scrutiny and social media inspections of visa applicants.[57]

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[54] *See Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States, supra.*

[55] *See* John Santucci & Veronica Stracqualursi, *Donald Trump Proposes 'Extreme Vetting' for Immigrants, With Ideological Screening Test*, ABC News (Aug. 15, 2016) http://abcnews.go.com/Politics/donald-trump-proposes-extreme-vetting-immigrants-ideological-screening/story?id=41392682; Daniel White, *Read Donald Trump's Ohio Speech on Immigration and Terrorism*, TIME (Aug. 15, 2016), http://time.com/4453110/donald-trump-national-security-immigration-terrorism-speech/.

[56] David Catanese, *Trump Promises 'Extreme Vetting' In Terror Speech*, Inside Higher Ed (Aug. 15, 2016), https://www.usnews.com/news/articles/2016-08-15/trump-promises-extreme-vetting-in-terror-speech.

Such widespread fears are supported by recent reports of Muslims being denied entry into the United States at the Canadian border after lengthy detentions and interrogations regarding their religious beliefs. One Moroccan-born Canadian Muslim described being able to enter the United States to visit her parents and brother, who live in the U.S., numerous times without incident before the E.O.[58] Yet shortly after the Muslim Ban was implemented—and while a nationwide injunction halting the travel restrictions of that E.O. was in place—she and her cousin were stopped, endured an hour-long search through their phones, and were questioned about their religious practices for 45 minutes, including where and how often she goes to mosque, and about her thoughts on the Muslim Ban. After another hour-long wait, she was denied entry into the United States. She felt "humiliated" and was "treated as if [she] was less than nothing."[59]

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[57] Michael Shear, *Trump Administration Orders Tougher Screening of Visa Applicants,* N.Y. Times (Mar. 23, 2017), https://www.nytimes.com/2017/03/23/us/politics/visa-extreme-vetting-rex-tillerson.html.

[58] Steve Rukavina, *Canadian woman turned away from U.S. border after questions about religion, Trump*, CBC News (Feb. 10, 2017), http://www.cbc.ca/news/canada/montreal/canadian-woman-turned-away-from-u-s-border-after-questions-about-religion-trump-1.3972019.

[59] *Id.*

These are not isolated stories. Muslims and those from Muslim-majority countries are increasingly subjected to lengthy, invasive, and impermissible religion-based questioning and searches at points of entry, including demands for passwords to cell phones and social media accounts, hours-long searches, and detailed interrogations regarding religious identity, affiliations, and practices. Over two dozen human rights and civil liberties groups recently detailed (in an open letter to United Nations experts), such targeted treatment of Muslim travelers as clear injury in the form of "violation[s] of human rights … including the fundamental rights to privacy, the freedom of opinion, expression, religion, belief, movement, and association," and "the principle of non-discrimination and right to equal protection."[60]

Amici have also witnessed a spike in concerns about privacy and freedom of speech, with many Muslim community members inclined to self-censor political speech and avoid certain communication platforms entirely due to fears the "extreme vetting" provisions of the Muslim Ban could lead law enforcement to maintain records of their political or religious views and other personal, First Amendment protected information. Many have reached out to Amici to request assistance in preparing G-28 forms ("Notice of Entry of Appearance as Attorney or Accredited Representative") in anticipation of targeted harassment at airports and other points of entry due to their religious identity.

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[60] Letter from Access Now to Zeid Ra'ad Al Hussein, High Commissioner for Human Rights, et al. (Feb. 16, 2017), https://www.accessnow.org/cms/assets/uploads/2017/02/JointLetterUSBorderSearches-Feb17.pdf.

D. The E.O's focus on Muslims and Muslim-majority countries is divorced from evidence, ill-conceived, and ill-advised.

In stark contrast to the Administration's claims, reports clearly demonstrate that Muslims, especially Muslim immigrants, pose an infinitesimal threat to national security.[61] For example, an assessment of the initial E.O. by the Department of Homeland Security reported that the targeted Muslim-majority countries were "rarely implicated" in U.S.-based terrorism and that citizenship (including citizenship from a

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[61] Numerically, Muslim immigrants constitute a very small portion of the American population. The Pew Research Center estimates that there were about 3.3 million Muslims living in the United States in 2015—approximately 1% of the total population. Approximately 10% of all immigrants are Muslim, and approximately half of all Muslims in the United States immigrated in the last twenty-five years. Thus, recent immigrants make up approximately 0.5% of the total population. Pew Research Center, *A new estimate of the U.S. Muslim population* (Jan. 6, 2016), http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/; Pew Research Center, *The Religious Affiliation of U.S. Immigrants: Majority Christian, Rising Share of Other Faiths* (May 17, 2013), http://www.pewforum.org/2013/05/17/the-religious-affiliation-of-us-immigrants/#muslim.

Muslim-majority country) is an unreliable indication of a terrorist threat.[62]

Likewise, the Cato Institute determined that the odds of an American perishing in a terrorist attack committed by a foreigner on U.S. soil over the last 41 years (including the attacks of September 11) was 1 in 3.6 million per year, or a 0.00003% chance.[63] Since 2001, only 365 individuals have been charged with or died engaging in terrorism or related activities inside the United States.[64] The risk is even smaller from immigrants from the Muslim-majority nations listed in the E.O.[65]

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[62] Zapotosky, *Revised executive order bans travelers from six Muslim-majority countries from getting new visas*, Wash. Post (Mar. 6, 2017), https://www.washingtonpost.com/world/national-security/new-executive-order-bans-travelers-from-six-muslim-majority-countries-applying-for-visas/2017/03/06/3012a42a-0277-11e7-ad5b-d22680e18d10_story.html?utm_term=.f4a41594a2f8 ("A Department of Homeland Security report assessing the terrorist threat posed by people from the seven countries covered by the president's original travel ban had cast doubt on the necessity of the executive order, concluding that citizenship was an 'unreliable' threat indicator and that people from the affected countries had rarely been implicated in U.S.-based terrorism.").

[63] Alex Nowrasteh, *Terrorism and Immigration: A Risk Analysis*, CATO at Liberty (Sept. 13, 2016) https://object.cato.org/sites/cato.org/files/pubs/pdf/pa798_1_1.pdf.

[64] *See* Peter Bergen et al., *Terrorism in America After 9/11, New America Foundation*, www.newamerica.org/in-depth/terrorism-in-america.

[65] Alex Nowrasteh, *Little National Security Benefit to Trump's Executive Order on Immigration*, CATO at Liberty (Jan. 25, 2017), https://www.cato.org/blog/little-national-security-benefit-trumps-executive-order-immigration.

The E.O.'s insistence on reporting crimes committed by foreign nationals, including "honor killings," is likewise misplaced as such crimes are exceedingly rare.[66]

All told, the E.O. does nothing to make the United States safer.[67] Instead, the E.O. traffics in prejudicial stereotypes, contributes to a climate of distrust towards the Muslim community, and has further stoked fears in the Muslim community that "the Trump Administration would scrutinize their religious identity with an unprecedented degree of suspicion and heavy-handed policy."[68]

CONCLUSION

The E.O. focuses exclusively on six Muslim-majority countries by banning the entry of their nationals and tying the alleged "risks" of their nationals' entry to the need for enhanced vetting procedures, thus violating the Establishment Clause by creating a disfavored religion in the United States. The injuries the E.O. inflicts apply to

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[66] Cynthia Helba, Ph.D., et al., *Report on Exploratory Study into Honor Violence Measurement Methods*, Justice Dep't (May 2015), https://www.ncjrs.gov/pdffiles1/bjs/grants/248879.pdf (estimating between 23 to 27 honor killings annually; i.e., approximately 0.008 offenses per 100,000 persons).

[67] Alejandro Beutel, *Data on Post-9/11 Terrorism in the United States*, Muslim Public Affairs Council (June 2012), http://www.mpac.org/assets/docs/publications/MPAC-Post-911-Terrorism-Data.pdf.

[68] Beydoun, *Acting Muslim*, *supra* at n.48.

Muslim communities across the country, disrupting personal, professional, and academic activities and unfairly and irreparably stigmatizing Muslims. Because the E.O. is nothing more than religious intolerance masquerading as an attempt to address (unfounded) security concerns, the injunction should be affirmed.

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This amicus brief complies with this Court's 6,500-word length limitation because it contains **6,225** words, excluding exempted parts of the brief. This brief complies with this Court's typeface and typestyle requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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